



MARYLAND DEPARTMENT OF THE ENVIRONMENT

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Martin O'Malley
Governor

Robert M. Summers, Ph.D.
Secretary

Anthony G. Brown
Lieutenant Governor

February 25, 2014

The Honorable Joan Carter Conway, Chair
Members of the Senate Education, Health & Environment Committee
2 West, Miller Senate Office Building
Annapolis, MD 21401

Re: Senate Bill 745 -- Shale Gas Drilling Safety Review Act of 2014

Dear Chair Conway and Committee Members:

The Maryland Department of the Environment (MDE or “the Department”) has reviewed Senate Bill 745, entitled *Shale Gas Drilling Safety Review Act of 2014*, and we would like to express our concerns and provide additional information regarding the bill.

This bill would prohibit the Maryland Department of the Environment (MDE) from issuing a permit for an exploratory or production natural gas well if that permit allowed hydraulic fracturing until certain conditions have been satisfied: (1) each requirement under the study required under The Marcellus Shale Safe Drilling Initiative Executive Order is satisfied; (2) 18 months have passed after the date the study required under the Executive Order is issued; and (3) MDE has adopted regulations that are in accord with the requirements of another section of the bill. The bill also mandates that if a Comprehensive Gas Development Plan is required as a prerequisite for a permit to hydraulically fracture a natural gas well, it must be required for exploratory, extension and production wells. Finally, the bill alters several definitions applicable to current oil and gas provisions and makes several statements as to the intent of the General Assembly related to hydraulic fracturing.

Under Governor O'Malley's Marcellus Shale Safe Drilling Initiative, the investigation of whether and how hydraulic fracturing for shale gas production can be done in Maryland without unacceptable risk to public health or the environment is well underway. This investigation includes all aspects of hydraulic fracturing and the risks associated with it. Under the Executive Order, MDE and the Department of Natural Resources (DNR) are directed to produce three reports in consultation with an Advisory Commission. The first report was issued at the end of 2011, the second report is in preparation, and the third and final report is due in August 2014.

The bill is unnecessary because an appropriate process is already in place for the Departments to investigate the matter, report to the Governor and General Assembly, and amend the regulations as appropriate. Moreover, under current law, the Legislature has entrusted decisions about gas well permits to MDE. The Department is already authorized to place, in a permit, conditions



which MDE deems reasonable and appropriate to assure that the operation provides for public safety and the protection of the State's natural resources. Section 14-110(b) of the Environment Article of the Maryland Code. The Department will base its decisions, as it does in a multitude of other contexts, on principles of science, engineering, geology, and protection of public health and the environment.

The Department is concerned because the bill could disrupt and delay an ongoing process for making a decision whether to allow hydraulic fracturing in Maryland. It would preempt, undermine, and interfere with the ongoing work of the Departments and the Advisory Commission. Examples are explained below.

Comprehensive Gas Development Plan: The second of the three reports, on Best Practices, was issued in draft in June 2013. The draft stated: "We propose that Maryland require, as a prerequisite to the issuance of any permit to drill a gas exploration, extension, or production well, that the prospective applicant first submit a Comprehensive Gas Development Plan (CGDP)." During the comment period, which closed in September 2013, more than 4,000 comments were received on the draft report; some of them addressed the requirement of the CGDP. A case was made for excluding exploratory and extension wells from the requirement. The Advisory Commission, MDE and DNR are still considering this issue and their recommendation will be included in the final report on best practices, which is expected this spring. The bill would apply the requirement to exploration and extension wells (page 4, lines 10 to 20) before the Departments and the Advisory Commission have fully considered the issue or made a recommendation.

Risk Assessment: The Departments committed months ago to prepare a risk assessment and are in the process of completing it. After a presentation by an expert in risk assessment at the August 2013 meeting of the Advisory Commission, the Departments prepared a work plan, presented it to the Advisory Commission at the September meeting, and sought input from the Commission and the public on which risks should be evaluated at the October 2013 meeting. The work on the risk assessment began and we expect to complete it in June 2014. The bill requires MDE and DNR to conduct a risk assessment, and describes in some detail how the study should be structured (page 4, line 32 through page 5, line 25). The structure differs somewhat from the Departments' work plan. The bill also requires that regulations be as protective of public health and the environment as "recommended" in the risk assessment (page 6, lines 22-27). Risk assessments do not make recommendations; they evaluate risks so that informed decisions can be made. The Departments should be allowed to complete their risk assessment and should not be required to prepare another report that is called a risk assessment but is not. Any regulations the Department proposes will be protective of public health and the environment and will be subject to review by the Administrative, Executive and Legislative Review Committee and the public process for proposal and adoption of regulations.

Regulations: The bill requires the Department, in any regulations specific to hydraulic fracturing, to include any restrictions or prohibitions deemed necessary by the Department to protect public health and the environment (page 6, lines 19-21). This requirement is unnecessary and may actually



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prevent the Department from ordering the safest practices at a particular site. Currently, § 14-110 of the Environment Article provides in part: “The Department may place in a permit conditions which the Department deems reasonable and appropriate to ... provide for public safety and the protection of the State's natural resources.” If the bill passes, a permit condition that provides extra protection at a specific site may be subject to challenge on the grounds that it is not “necessary” because all the “necessary” provisions are in the regulations.

The bill contains ambiguities and errors in language, but clarification and correction of these would not alter the Department’s basic concerns about this bill. We respectfully request that the legislature allow the Departments and the Advisory Commission to complete their work as set out in the Executive Order.

Thank you for your consideration. We will continue to monitor Senate Bill 745 during the Committee’s deliberations, and I am available to answer any questions you may have. Please feel free to contact me at 410-260-6301 or by e-mail at jeffrey.fretwell@maryland.gov.

Sincerely,



Jeffrey Fretwell

cc: The Honorable Ronald N. Young
Brigid Kenney, Senior Policy Advisor, MDE
Horacio Tablada, Director, Land Management Administration, MDE

